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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

NO. ~~1154~~ 254

THE COMFY MANUFACTURING COMPANY
and FRED E. KATZNER, *Appellants*

v.

UNITED STATES OF AMERICA, *Appellee*

**On Appeal from the United States District Court for the Eastern District of Pennsylvania**

## STATEMENT AS TO JURISDICTION

ROBERT L. WRIGHT
MILTON M. GOTTESMAN
Wyatt Building
Washington 5, D. C.

*Attorneys for Appellants*

BLADES AND ROSENFELD
Baltimore, Maryland

*Of Counsel*

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## STATEMENT AS TO JURISDICTION

Appellants appeal from the final judgment issued by the United States District Court for the Eastern District of Pennsylvania, on March 14, 1957 in a proceeding brought by the United States under Section 4 of the Sherman Act, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

## OPINION BELOW

The opinion of the District Court for the Eastern District of Pennsylvania is reported at 143 F. Supp. 184 and is attached to this statement as Appendix A. The Court's final judgment is unreported, and it is set forth in full as Appendix B.

## JURISDICTION

This suit was brought by the Government under 15 U.S.C. § 4 to enjoin an alleged conspiracy in unreasonable restraint of trade in the slip cover industry in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), and an alleged conspiracy to monopolize the slip cover industry in violation of Section 2 of that Act (15 U.S.C. § 2). Judgment for the plaintiff was entered on March 14, 1957 and Notice of Appeal was filed on behalf of defendants Comfy Manufacturing Co. and Fred E. Katzner in the U. S. District Court for the Eastern District of Pennsylvania on April 4, 1957. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 15 U.S.C. § 29. The following decisions sustain the jurisdiction of this Court to review such a judgment on direct appeal: *United States* v. *California Cooperative Canneries*, 279 U.S. 553; *United States* v. *Times-Picayune Publishing Co.*, 345 U.S. 594.

## STATUTE INVOLVED

Sections 1, 2 and 4 of the Sherman Act, 15 U.S.C. §§ 1, 2, 4, set out in full as Appendix C.

## QUESTIONS PRESENTED[1]

1. May a District Court on motion for summary judgment find a conspiracy to monopolize an industry on the basis of factual inferences from letters subject to conflicting interpretations and fragmentary industry statistics.

2. Does a District Court have jurisdiction to enjoin violations of the Robinson-Patman Act in the absence of any charge or proof of violation of that statute?

3. Is a District Court authorized to enjoin antitrust defendants from individually engaging in competitive trade practices in the absence of any evidence that such practices were related to the conspiracy found by its opinion or that such relief was required by competitive conditions in the industry?

## STATEMENT OF THE CASE

The Complaint was filed on June 7, 1950, and charged that the Comfy Manufacturing Company had combined with a competitor, the Sure-Fit Products Company, and an inventor named Oppenheimer, to monopolize the ready-made furniture slip cover industry. In 1938, Oppenheimer, who had invented a knitted slip cover, assigned his patent to Comfy. Comfy then licensed Sure-Fit under that patent and took a limited cross-license allowing it to sell chair covers under a Sure-Fit patent in 10 stores. The licensor and licensee agreed to cooperate in enforcing the Oppenheimer patent against infringers and in licensing other manufacturers, if any. Sure-Fit also

[1] The notice of appeal presents ten separate questions, none of which is hereby abandoned. For brevity, only the principal questions have been noted above.

agreed not to sell the patented product at a price lower than that charged by Comfy. In January, 1942 the price provisions were cancelled and in July, 1949, the entire agreement was cancelled.

On April 17, 1950, Comfy was subpoenaed to produce its records before a grand jury and an indictment was returned against it on June 2, 1950. Five days later this complaint was filed. The charge of the indictment is the same as the charge of the civil complaint, and it is still awaiting trial.[2]

In January, 1954, the Government filed a motion for summary judgment, upon the ground that determination of the issues of fact joined by the pleadings as to the course of dealing between Comfy, Sure-Fit and their competitors during the period 1938 to 1949 had been made unnecessary by the defendants' admissions as to documentary evidence offered in support of the motion. The principal facts established by these admissions were the execution of the 1938 agreement, the authenticity of some 500-odd pieces of correspondence obtained from the defendants' files in the grand jury investigation, the total annual volume of slip cover business respectively handled by Comfy and Sure-Fit, and the annual patent royalties paid by and to them. The Government also offered affidavits of thirteen other manufacturers of slip covers showing their net sales in the year 1948. No other testimony from any slip cover manufacturer was offered.

The defendants' correspondence was offered and received in evidence, en masse, upon a preliminary

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[2] The inventor, Oppenheimer, was charged as a co-conspirator but was not made a defendant in the criminal case.

screening for "apparent relevancy" to the complaint, at a pre-trial conference held after the Government's motion for summary judgment was filed. This screening, however, was without prejudice to the defendants' right to make and press at the trial whatever objections they might have as to the competency of a particular statement in a letter to prove a particular fact or as to the materiality of such statements to a specific issue (R. 398-400, 446-448). The motion for summary judgment was heard on December 20-22, 1955. This hearing was the only trial had, and the case was decided upon summary judgment over the defendants' objection.

On July 30, 1956, the Court rendered its final opinion which found that the documents in evidence raised no material issues of fact; that the 1938 agreement had resulted in a continuing price-fixing conspiracy which violated Section 1 of the Sherman Act; that the defendants had abused the Oppenheimer patent by their joint enforcement activity; and that they had also conspired to monopolize the ready-made furniture slip cover industry in violation of Section 2 of the Act. Although the Court noted the charge in the complaint that the defendants had also conspired with each other to employ derogatory statements, price discounts, advertising allowances, return privileges and other competitive practices to injure other slip cover manufacturers the opinion refers to no evidence in support of these allegations.

On March 14, 1957, the Court entered a judgment in accordance with its opinion which granted extensive affirmative relief intended to cure the patent abuses described in the opinion. The Court also enjoined the conspiracy to fix prices and to monopolize, described

in the opinion. In addition to this relief, the Court included five provisions tendered by the Government which enjoined the defendants from individually engaging in the various competitive practices alleged in the complaint to have been employed against competitors pursuant to the alleged conspiracy, although these charges had not been found in the opinion to be sustained by the evidence. On April 4, 1957 defendants Comfy and Fred Katzner, its president, filed this appeal.

## THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

**1. May a District Court on motion for summary judgment find a conspiracy to monopolize an industry on the basis of factual inferences from letters subject to conflicting interpretations and fragmentary industry statistics?**

The District Court's decision of the case on summary judgment was an abuse which this Court should correct. This Court exercises sole supervisory power over the procedure employed by District Courts to decide civil antitrust suits brought by the United States. While summary judgment under Rule 56 is an accepted method of deciding such cases, the District Courts should be confined to the use of that method in the rare cases where hearing testimony could not produce a different result. This was clearly not such a case.

It may be assumed, *arguendo*, that the 1938 license agreement was intended to control the minimum price at which Comfy and Sure-Fit would sell the patented product, knitted slip covers; that they were the two largest makers of ready-made furniture slip covers; that they sought to share whatever competitive advantage could be derived from enforcement of the Oppenheimer patent against others and that

they did not wish to risk an adjudication of the patent's validity if they could enforce it without such an adjudication. Whether such an agreement is illegal per se is a dubious question, but is at least one which might properly be regarded as a question of law. If the relief granted below had been confined to dissipating whatever competitive advantage the defendants had enjoyed from their joint control of the Oppenheimer patent it could be argued that the injunction was appropriate to the summary procedure employed. In its opinion, however, the Court below undertook to find as a fact that the 1938 agreement had also resulted in a continuing conspiracy to fix prices and to monopolize an industry. Its injunction accordingly went far beyond invalidating the 1938 agreement and dissipating its effects.

Moreover the trade practice provisions included in the injunction prevented Comfy from using normal competitive practices against Sure-Fit and other slip cover manufacturers, notwithstanding the absence of any basis for such action in the Court's own opinion or in the evidence. The opinion went far beyond the undisputed facts and the injunction went far beyond the opinion. The manner in which this summary procedure enabled the Government to ride roughshod over the rights normally accorded to an antitrust defendant is shown by the Court's treatment of the monopolization charge.

The apparent basis for the Court's conclusion that there was a joint attempt to monopolize the ready-made furniture slip cover industry was that "The defendants controlled the key patents in the industry" (App. 24a); that their infringement suits against retailers were "calculated to and did extend their

dominion in the slip cover field" (App. 17a); that they had the power "to control prices in this particular field" (App. 23a); and that they were "the two largest competitors in the industry[3] and dominated it dollarwise" (App. 24a).

In moving for summary judgment upon the basis of the documents found in the defendants' files, the Government led the Court into the error of assuming that it could supply by inferences from those documents facts which would normally require independent proof. Thus, we find the Court basing its finding that defendants had the power to control prices on an inference from a claim in a letter (Gov. Ex. 502)[4] from Katzner, County's president, to Sure-Fit's counsel stating that Sears, Roebuck respects patents (App. 23a). In admitting the authenticity of this letter the defendants clearly did not admit the fact that Sears, Roebuck respected patents to the point of accepting

[3] The terms, "the industry" and "the slip cover field" actually refer to only to the ready-made furniture slip cover industry. There was no evidence concerning custom-made furniture slip covers and the Court's conclusion that the ready-made manufacturers constituted a separate industry, subject to monopolization in violation of Section 2, was made without benefit of any evidence as to the functional interchangeability of these products. That this was a matter of decisive significance, which would ordinarily be resolved only after hearing expert testimony, is shown by this Court's decision in *United States* v. *Dupont*, 351 U.S. 377. Yet the Court was induced to draw an inference that such interchangeability did not exist from statiscal evidence confined entirely to ready-made slip covers.

[4] The letter was written in a futile effort to persuade Sure-Fit to continue to pay royalties on the Oppenheimer patent. Sure-Fit had cancelled the license agreement because a "large number of others are manufacturing knitted slip covers like Sure-fit's knitted slip covers, without paying any royalty under the Oppenheimer patent. (Gov. Ex. 501).

the manufacturer's judgment of their scope and validity in preference to that of Sears' own counsel. If that were thought to be a material fact, some testimony from some representative of Sears, Roebuck would be required to establish it. But even if Katzner's claim were regarded as proof of the claimed fact it could not support the Court's ultimate conclusion that the Oppenheimer patent gave the defendants power to fix ready-made furniture slip cover prices. Ownership of a patent automatically gives power to exclude any price or other competition from infringing products. However, the fact that the Oppenheimer patent excluded such competition did not mean that whoever controlled this particular knitted slip cover patent could control slip cover prices or monopolize the slip cover industry. That conclusion is not supported by Katzner's letter or any other evidence.

In describing the defendants' patents as "key" patents the Court evidently meant that knitted slip covers, the only kind which the Oppenheimer patent affected, were a key to domination of the ready-made slip cover industry.[5] Yet there is no evidence as to the proportion that sales of knitted slip covers bore to total sales of ready-made slip covers at any time. Although the Government offered evidence of the annual sales volume of the defendants it offered no evidence of the amount of their knitted slip cover sales. The Court noted that there were generally

[5] As to the other patents referred to by the Government, Comfy patents Nos. 2,238,795 and No. 2,212,485 and Krasnov Patent No. 1,984,973, there is no evidence that any were ever enforced or asserted against anyone; no evidence that any sales were made under them or any royalties paid. The patents themselves were not offered in evidence and there is no description anywhere in the record of their subject matter.

speaking four different types of slip covers of which knitted was only one (App. 2a), but there was no evidence from manufacturers, retailers, customers, marketing experts or any other persons who might presumably give an informed opinion, as to the advantages, if any, of the patented knitted slip covers over other slip covers made of woven fabric, elastic fabric, or plastic material.

In support of the allegation that defendants "dominated the industry dollarwise", the Government offered evidence as to the total sales of other manufacturers of ready-made furniture slip covers only for the year 1948 (R. 107, 230-242). Although complete official census figures for all such manufacturers were available for the years 1947 and 1954, the Government chose to present only incomplete figures for the year 1948, when no census was made. The Government's figures were based upon affidavits obtained from a selected group of manufacturers in response to inquiries made by the Justice Department for the purpose of this case. That group included only fifteen manufacturers with annual sales of more than $100,000 although there were twenty-one such manufacturers according to the 1947 census (R. 922). The defendants' combined sales for 1947 were actually only 54% of the total of ready-made furniture slip cover manufacturers as shown by the census (R. 165-169, 922, 926, 933). By using as the total for the year 1948, only the sales of the defendants and the thirteen manufacturers from which the Government offered affidavits, the Government constructed an inflated figure of 62% for the year 1948. This figure was then urged upon the Court as evidence of defendants'

alleged monopolization. The Government's procedure prevented cross-examination which would have shown that the 62% figure was erroneous when it was first pressed upon the Court.

Significantly, the Government offered no evidence as to the defendants' position in the ready-made furniture slip cover field after 1948 although it had complete census figures for such manufacturers in 1954. A comparison of the defendants' sales for that year with the census figures shows that their combined position in 1954 was much less favorable than it had been in 1948. By 1954 their combined percentage of ready-made furniture slip cover sales had declined to 46 per cent. From 1947 to 1954, the number of such slip cover manufacturers with an annual volume over $100,000 nearly doubled.[6] Normally, upon a complaint brought in 1950, even after a full trial, the Government would have felt some obligation to show current competitive conditions in the slip cover industry before requesting in 1957 a broad injunction intended to end an alleged conspiracy to monopolize it. The granting of such an injunction, without such evidence or even an evaluation of conflicting claims as to the period preceding the complaint in the normal context of live testimony, was an abuse of summary judgment procedure.

We know of no other instance where a court has found an attempt to monopolize an industry upon a

[6] According to the Bureau of the Census, the number of slip cover manufacturers reporting shipments in excess of $100,000 increased from twenty-one in 1947 to thirty-seven in 1954. (R. 922 and 926).

motion for summary judgment[7] and it is difficult to conceive of a record which would eliminate any dispute as to the fact of specific intent which normally determines such an issue. A specific intent to monopolize may not be inferred from a conspiracy in restraint of trade. An additional intention that the conspiracy result in monopoly must be explicitly shown. *United States* v. *Times-Picayune Publishing Co.*, 345 U.S. 594, 626. No evidence was before the Court in this case from which such an intent could be found. In all of the documents before the Court there is not a line showing that Comfy or Sure-Fit, singly or together, intended anything more than what their license agreement provided by its express terms. The decision in this case is a precedent for unwarranted charges of attempted monopolization which this Court should reverse.

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[7] The closest approaches are the Associated Press and United States Gypsum cases. In the former case the A.P. by-laws were held to be a contract in violation of the Sherman Act but there is no discussion of any violation based upon a monopolistic intent other than that demonstrated by the by-laws themselves, to monopolize the A.P.'s own news. *U. S.* v. *Associated Press*, 52 F. Supp. 362, 326 U.S. 1. In the latter case the conspiracy in violation of Section 1 was found to have resulted in actual monopolization in violation of Section 2 because the conspiracy included all of the manufacturers in the industry. *U. S.* v. *U. S. Gypsum Co.*, 340 U.S. 76. Unlike this case, the summary judgment entered there was not based upon any evaluation of documents reflecting a course of business, unaided by the testimony of the authors. The summary judgment there was justified by this Court's opinion reviewing a record which contained a full examination and cross-examination of such witnesses. 333 U.S. 364, 372; 340 U.S. 76, 82, 86.

**2. Does a District Court have jurisdiction to enjoin violations of the Robinson-Patman Act in the absence of any charge or proof of violation of that statute?**

The Court lacked jurisdiction to enjoin the defendants from competing with each other and with other slip cover manufacturers by using price concessions. Section VI (C) of the decree provided for an injunction against the individual use of price concessions which might violate the Robinson-Patman Act, 15 U.S.C. § 13(d), in the following terms:

> (C) Granting to any retailer of slip covers special discounts, advertising allowances or return privileges which are not available to others on proportionately equal terms; (App. 35a)

No charge of a violation of the Robinson-Patman Act by any defendant was made in the Complaint, the Government's briefs or in its oral argument; nor was there any proof of such a violation.

The Court's opinion refers to no evidence supporting the Government's charge that the defendants agreed with each other to give price discounts, advertising allowances, return privileges or other special concessions to their retail customers. Any use of extraordinary price concessions was inconsistent with the Government's claim that the defendants had agreed to fix minimum prices for slip covers and the evidence showed that their insistence upon using such concessions to take business from each other resulted in the cancellation of the price provisions of their license agreement in 1942.[8]

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[8] See Gov. Ex. 18A containing the full text of the letter from Comfy to its attorney, quoted in part in the opinion (App. 12a, 13a). Gov. Exs. 385, 420, 443, 455 and 459 show such competition before and after the cancellation.

At the hearing on defendants' objections to the Government's proposed decree, the Government asserted that its proposed injunction against discriminatory discounts should be included because the proposed injunction was in terms similar to the prohibitions of the Robinson-Patman Act. There was no proof that this conduct, if not enjoined, would tend to further the conspiracy described in the opinion, or any similar conspiracy.

The Government's reasoning was apparently as follows: The defendants regularly gave price concessions in competing with each other and with other manufacturers. While there was no evidence that any concession granted was itself illegal under the Robinson-Patman Act or had been granted pursuant to an agreement between the defendants, the defendants were, after all, violators of the Sherman Act. Therefore, the decree should also make them liable in contempt for independent Robinson-Patman Act violations.

In reaching this conclusion the Court and the Government completely overlooked the limitations upon the Court's jurisdiction resulting from the nature of the complaint. This complaint was filed under Section 4 of the Sherman Act (15 U.S.C. § 4) and charged only violations of Section 1 and 2 of that Act (15 U.S.C. §§ 1 and 2). Section 4 does not authorize any injunction against violation of the Robinson-Patman Act. Where the Government seeks to enjoin a violation of that Act it must charge such a violation in a complaint filed under Section 15 of the Clayton Act (15 U.S.C. § 25). Congress established independent enforcement authority for violations of the Robinson-Patman and Sherman Acts because they contain contradictory prohibitions.

The Robinson-Patman Act is aimed at price variations by a single manufacturer which discriminate between large and small buyers. The Sherman Act is aimed at agreements between two or more manufacturers which inhibit such price variations. Congress has carefully distributed enforcement jurisdiction of these statutes so that no businessmen may be enjoined from violating the Robinson-Patman Act in a suit charging only violations of the Sherman Act.

No court is authorized to enjoin violations of the Robinson-Patman Act in a proceeding where a violation has not been charged and proved. Before there is any liability for contempt, a respondent must be shown to have violated either a Federal Trade Commission order specifically applying the Act to the respondent, or a specific District Court injunction based upon violations of the Act charged and proved in that Court. Only in a proceeding charging a violation of the Act may a manufacturer learn with any degree of certainty which advertising allowances or other concessions he has made to get business are thought to violate the statute.

In conditioning injunctions upon prior proof of violations Congress could not have supposed that any court would take it upon itself without such proof to prohibit by decree what the Act itself prohibits. In urging such relief upon the Court below, in a proceeding where a charge of Robinson-Patman Act violation was never even made, the Government was indifferent to its own enforcement responsibility.

We do not suggest that a Court in a Sherman Act case may not enjoin conduct which furthers a Sherman Act conspiracy regardless of whether or not the

conduct enjoined may also violate the Robinson-Patman Act. But where, as here, the conduct enjoined was in no way related to the enjoined conspiracy, there is no warrant in the Sherman Act for the injunction. The Court below was without any jurisdiction to enjoin the defendants from granting price concessions and this Court should in any event vacate this provision.

**3. Is a District Court authorized to enjoin antitrust defendants from individually engaging in competitive trade practices in the absence of any evidence that such practices were related to the conspiracy found by its opinion or that such relief was required by competitive conditions in the industry?**

There was no basis for any of the other injunctions against competitive trade practices in the statutes, evidence or opinion. None of the five trade practices jointly and severally enjoined by Sections VI(A) through (E) of the Decree (App. 35a, 36a) were ever shown to have been a part of the alleged conspiracy. There was not even a charge that any of them had been individually employed to restrain competition. The opinion does not suggest that there was any such proof.

With minor exceptions, the injunctions of Section VI are broad enough to prohibit normal methods of competition. These severe restrictions on normal competition appear to have resulted from the Government's assertion that an antitrust decree need not be confined to curing proven restraints but may regulate the defendants' future competition without regard to their past conduct or the purpose of the applicable statutes.

Section VI (B), for example (App. 35a), prohibits each defendant, individually, from "making or causing to be made false, derogatory, or disparaging

statements concerning slip covers manufactured by others . . ." There was no evidence or suggestion in the opinion that the defendants had ever made false statements about competing slip covers. As for derogatory or disparaging statements, Comfy has always asserted that it is one of the most successful manufacturers of slip covers because it makes the best ready-made slip covers available. Yet if this injunction is enforced, its salesmen can no longer say, what they have every reason to believe, that a competitor's slip covers are not as good as Comfy's. No matter how shoddy the competitor's product may be, Comfy's salesmen cannot mention that fact without subjecting Comfy to contempt liability under this decree. We respectfully submit that this kind of injunction contributes nothing to antitrust enforcement and its effect on Comfy's ability to survive in a competitive business like this could be disastrous. It has an obvious tendency to discredit the judicial enforcement of antitrust policy that this Court should correct.

Another example of the unwarranted nature of these trade practice provisions is Section VI (D) which enjoins all exclusive dealing contracts or understandings (App. 35a). Although Congress in §3 of the Clayton Act, 15 U.S.C. § 14, was careful to proscribe exclusive dealing arrangements only when their effect may be to substantially lessen competition, the Court's order subjected the defendants to sweeping contempt liability for all such agreements without regard to their purpose, duration or effect on competition.

Not only does the judgment foreclose the defendants from any opportunity to justify their exclusive dealing arrangements in the future, but under the summary judgment disposition of this case, the Court

precluded any evaluation of the competitive effect of the defendants' past conduct. The correspondence in the record suggests that each defendant individually sought, wherever possible, to induce retailers to carry its line and not its competitors'. Nothing in the evidence, however, points to any joint activity of this nature. Just the opposite is shown. There are several letters which show that when Comfy was trying to get a store to carry its line, it was attempting to exclude Sure-Fit (Gov. Exs. 443, 455 and 459). Likewise, the record suggests that when Sure-Fit was soliciting exclusive patronage, it was doing so at Comfy's expense (Gov. Ex. 420).

By the summary judgment technique, however, the defendants were precluded from showing the competitive context of their efforts to win a store's exclusive patronage. They were precluded from showing that as a practical matter most retailers themselves prefer to handle only one slip cover line at one time because of problems of inventory control and the confusion of patterns, sizes, styles and nomenclature to which a multiplicity of lines leads. On the face of the Government's own exhibits it appears that there were no contracts obligating a retailer to continue to deal with either defendant if he could get a better deal from a competing manufacturer on the next order.

The only qualification which the Court imposed on its order making exclusive dealing arrangements *per se* unlawful and subject to the contempt penalty was an exemption of agreements made with a retailer in a city having a population of less than 25,000 inhabitants. This qualification was not proposed either by the Government or by the defendants but was inserted by the Court *sua sponte*. If the Court's purpose in excluding

agreements with owners of individual stores in small towns was to formulate a yardstick of effect on competition, it is a wholly arbitrary and unrealistic test without any basis in the economics of this industry. There is nothing in the record below which supports the proposition that exclusive dealing arrangements *per se* substantially lessen competition where the retailer is located in a city with a population of over 25,000 but that they may not so lessen competition where the store is located in a smaller town. Just the contrary effect would normally be expected. In a small town with only one retailer, an exclusive agreement with that retailer might exclude other manufacturers from the town. In cities over 25,000, however, there are generally several retailers each of which will normally carry a different line of slip covers. If any exclusive dealing limitation were to be imposed which was related to competitive facts in this industry it would exempt towns over 25,000. The Court's exemption of towns under 25,000 is a classic example of the kind of error which occurs when injunctions are formed upon abstract notions of what is desirable, without any consideration of industry facts.

Instead of relieving the Government of the necessity of producing a broad range of proof to support its extremely broad proferred decree, the summary judgment procedure in fact confined the area of permissible relief to the narrow range of facts not in dispute. Yet the Court below felt no more constrained in granting relief by the limitations imposed by its own summary procedure than it did by jurisdictional limitations imposed by statute. This Court has always exercised its appellate jurisdiction to see that antitrust relief granted to the Government in civil cases is necessary

and properly related to a proven offense.[9] A flagrant abuse of the District Court's power to grant such relief occurred here and this Court should correct the dangerous precedent that this decision represents.

We believe that the erroneous decision below, the procedure by which it was obtained, and the breadth and severity of the injunction sought and granted all warrant plenary consideration by this Court.

Respectfully submitted,

ROBERT L. WRIGHT
MILTON M. GOTTESMAN
Wyatt Building
Washington 5, D. C.
*Attorneys for Appellants*

BLADES AND ROSENFELD
Baltimore, Maryland
*Of Counsel*

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[9] Cf. *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 410 et seq.; *Standard Oil Co.* v. *United States*, 221 U.S. 1, 77-82.